IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10959 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HARSHADRAY MOHANDAS ACHARAYA

Versus

DIST. DEVELOPMENT OFFICER

Appearance:

1. Special Civil Application No. 10959 of 1993

NOTICE SERVED for Petitioner No. 1

MR HS MUNSHAW for Respondent No. 1-2

MR PRADIP D BHATE AGP for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 29/07/2004

ORAL JUDGEMENT

1.0 The petitioner herein has challenged the Circular dated 19/06/93 issued by the Deputy Director, Veterinary, Mehsana Jilla Panchayat, at Annexure `B' to the petition, whereby the petitioner was removed from his service as a

daily wager.

2.0 The petitioner was appointed as a daily wages Peon at the Veterinary Centre at Chandrasan. Permission to appoint daily wages Peon was granted periodically in the name of the Veterinary Doctor / Officer at Chandrasan. In lieu of such permission, the petitioner was appointed on his job and extension was given from time to time since 1990.

2.1 In the year 1993 the Deputy Director, Mehsana Jilla Panchayat issued a Circular, whereby applications were invited from daily wage Peons. In lieu of the said Circular, the petitioner submitted his application. To the utter surprise of the petitioner, his services were terminated in June 1993 on the basis of the above Circular. Hence, this petition.

3.0 On 31/03/04 it was brought to the notice of this Court that Mr.Pradyuman B. Bhatt learned advocate appearing for the petitioner has expired. Therefore, fresh Notice was issued. Though served, the petitioner has not turned up nor has anybody appeared on his behalf. Previously, the matter was adjourned on four occasions. Therefore, the matter was taken up today.

4.0 Mr.H S Munshaw learned advocate for respondents no.1 & 2 has submitted that due to non-availability of regular employee the Centre was in need of persons for a temporary period. He has submitted that the petitioner was appointed as a daily wager for fixed hours per day and that as the regular employee was appointed at the Centre and had taken charge, the services of the petitioner were not required. Therefore, the petitioner was removed from his service. Moreover, the petitioner was appointed without following the due procedure of Recruitment.

4.1 Mr.Munshaw for the respondents has also relied upon a decision of this Court (Coram : R.K.Abichandani, J.) in S.C.A. No. 4201/1993 dated 15/07/93, wherein the Court had directed respondent no.1 to treat the application of the petitioner as a representation for work and shall also consider the question as to whether the petitioner can be given a regular appointment as per the rules and regulations.

4.2 Mr.Munshaw for the respondents has also placed reliance on the Full Bench decision of this Court in S.C.A. No.5746/1999 dated 09/07/04 and more particularly on para 12.1.13 of the said decision, which reads as

under.

Para 12.1.13 : "Even if it is held that the Labour Court/ Industrial Tribunal has wide jurisdiction to alter service conditions, it can exercise such powers subject to the recruitment rules, availability of sanctioned posts and subject to the grant and limits of budgetary provisions. When there is no permanent post, no direction can be given to the authorities to absorb daily wage employees by creating new posts. It is the common phenomenon in the case of Nagarpalikas / Municipalities / Government Corporations where such appointments are made on political considerations. The parties in power may recruit their own persons as daily rated employees and thereafter by seeking orders from the Court, they want to absorb such employees on permanent establishment. Time and again, such practice is deprecated in so many words in the judgment referred by us. The Panchayats, Municipalities, Municipal Corporation or Government Corporations as well as Government establishments are facing severe financial crisis only because of such staff which may be required for the time being, but to make them permanent would definitely adversely affect the financial substratum of respective organizations and the Courts should not be party to such illegal and irregular appointments by allowing them to be continued at the cost of public exchequer. We are conscious of the fact that by not approving the appointments of such daily wagers, it will be very difficult for them to survive and the question of their livelihood would arise. Keeping this aspect in mind, We do feel that in appropriate cases, their interests are required to be protected. We accordingly give following guidelines:-

(1) If casual workers or daily rated workers are not required by the Local bodies and whose services are likely to be terminated, they should be relieved on the principle of "last come, first go". In the event of filling up the posts in future, those who are eligible and qualified from and amongst the relieved workmen shall be preferred by waiving the age limit.

(2) If the workman who have continued for years as temporary employee, in the event of their termination, the authorities will see that no unqualified person is appointed in their place.

(3) The question of regularization can also be considered by the authorities before terminating services provided the workers are eligible on the sanctioned posts.

(4) If the posts are not sanctioned, the authorities may take such steps which are necessary in accordance with the provisions of law / rules / circulars within the budgetary provisions."

5.0 Having gone through the averments made in the petition as also the observations made in the aforesaid two decisions, it is very clear that the petitioner was a daily wager and that he was appointed on a purely temporary basis till the regular employee was appointed. Therefore, it cannot be said that the petitioner was a permanent employee with the respondents. Moreover, in view of the Full Bench decision of this Court, the services of the petitioner cannot be regularized. I find no merit in the present petition and hence it deserves to be dismissed.

6. For the foregoing reasons, the petition is dismissed. Rule is discharged with no orders as to costs.

(K. S. Jhaveri, J.)

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